

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFF J VAN ERT
Claimant

ATLANTIC COMM SCHOOLS
Employer

APPEAL 18A-UI-08354-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/31/17
Claimant: Respondent (4)

Iowa Code Chapter 96 – Requalification
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Atlantic Comm Schools, (employer) filed an appeal from the August 3, 2018, reference 04, unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on August 28, 2018. Jeff J. Van Ert, (claimant) did not respond to the hearing notice and did not participate. The employer participated through Payroll Secretary Emily McLaren. The Employer's Exhibit 1 was received. The administrative law judge took official notice of the administrative record, specifically the claimant's database readout (DBRO) and wage history (WAGEA).

ISSUES:

Is the employer's protest timely?

Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective December 31, 2017 and his weekly benefit amount is \$321.00. The claimant separated from the employer on February 24, 2017. The administrative record shows the claimant earned more than \$3,210.00 in insured wages from a subsequent employer prior to filing his claim for benefits.

The notice of claim was mailed to the employer's address of record on January 8, 2018, and was received within the protest period on January 10, 2018. The employer filed its protest on January 10, 2018 via fax; however, it does not appear it was received by the agency. The first notice the employer had it was being charged for the claimant's unemployment insurance benefits was the Statement of Charges mailed on July 16, 2018 for the first quarter of 2018. The employer contacted Iowa Workforce Development (IWD) and resubmitted its protest.

REASONING AND CONCLUSIONS OF LAW:

Based on the following, the administrative law judge concludes the employer filed a timely protest and the claimant has requalified for benefits since the separation. Therefore, benefits are allowed, provided the claimant is otherwise eligible, and the employer's account shall not be charged.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). Another portion of Iowa Code § 96.6(2) dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The reasoning and holding of the *Beardslee* court is considered controlling on the

portion of Iowa Code § 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

The employer filed a protest in a timely manner on January 10, 2018, but the agency did not receive the fax transmission. Immediately upon receipt of information to that effect, the protest was re-filed. Therefore, the protest shall be accepted as timely. The claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed, provided the claimant is otherwise eligible, and the account of the employer shall not be charged.

DECISION:

The August 3, 2018, reference 04, unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn